APPENDIX

Nos. 81-5297, 81-5345, 81-5346, 81-5347

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA	)	
	)	
Plaintiff-Appellee	)	
	)	
vs.	)	
	)	
MONNIE DERICKSON (81-5297)	)	O R D E R
DEBBIE NEWSOM & DONALD NEWSOM (81-5345)	)	
LARRY NEWSOM (81-5346)	)	
BEVERLY MEHRATZA (81-5347)	)	
	)	
Defedants-Appellants	)	

Before: ENGEL and CONTIE, Circuit Judges; and TAYLOR, District Judge.*

The five defendants appeal from their criminal convictions for distribution and conspiracy to distribute marijuana and cocaine. Seven counts were charged in the

*The Honorable Robert L. Taylor, United States District Judge, Eastern District of Tennessee, sitting by designation.

indictment. Count One charged all defendants with conspiracy to distribute marijuana and cocaine. Counts Two and Three charged that Beverly Mehratza distributed one pound of marijuana on two occasions, March 13, 1980, and March 28, 1980. Count Four charged that Monnie Derickson, aided and abetted by Beverly Mehratza and Debbie Newsom, distributed one pound of marijuana on April 8, 1980. Count Five charged that Debbie Newsom, aided and abetted by Beverly Mehratza, Monnie Derickson and Donald Newsom, distributed one pound of marijuana on May 22, 1980. Count Six charged that all defendants except Beverly Mehratza distributed two grams of cocaine on July 17, 1980. Count Seven charged that Larry Newsom distributed one pound of marijuana on August 7, 1980. The jury returned guilty verdicts on all counts except that it found Larry Newsom not guilty of distributing cocaine (Count Six).

The case involves six drug buys made by a government informant, Sue Sandy, from the five defendants. All of the defendants are related: Monnie Derickson is the mother of Beverly Mehratza and Debbie Newsom; Donald Newsom is Debbie's husband; and Larry Newsom is Donald's brother.

Prior to going to work for the Memphis police, Sue Sandy had bought marijuana from Beverly Mehratza. Sandy testified that Derickson supplied Mehratza with garbage bags full of marijuana and that Mehratza bragged about bringing huge quantities of marijuana and cocaine up from Florida.

The first buy occurred on March 13, 1980, with Sandy buying one pound of marijuana from Mehratza. All six drug buys were taped. During this sale, Mehratza told Sandy that the marijuana came from Donald and Debbie Newsom. The second buy occurred on March 28, 1980, with Mehratza selling another pound of marijuana to Sandy.

On this occasion, Mehratza told Sandy that she and Derickson would soon be picking up large quantities of marijuana and cocaine. During the next week, Sandy talked to Derickson, Mehratza, and Debbie Newsom about buying more drugs. On April 8, 1980, Sandy made the third buy with Derickson delivering one pound of marijuana to her. As she left, Derickson said that she had to go to Debbie Newsom's house to pick up more marijuana. The fourth buy was made on May 22, 1980, with Sandy buying a pound of marijuana at Donald and Debbie Newsom's house. Only Debbie was present until the end of the sale when Donald entered the room and directed Sandy to pay Debbie. The pound was one ounce short, so, a few days later, Mehratza brought over one ounce of marijuana and Debbie Newsom handed it to Sandy.

Sandy had previously talked to Mehratza about buying cocaine. No sale was made

until July 17, 1980. After delivery of the cocaine, Sandy complained to Derickson about the quality of the cocaine. Derickson told her that everyone else had liked it. Earlier, Derickson had said that Donald Newsom had tested the cocaine and found it to be high quality. The last buy was made on August 7, 1980. Sandy had negotiated with Donald and Debbie Newsom to buy a pound of marijuana, but when Sandy called to set up delivery, Donald was not home. Larry Newsom volunteered to make the sale. He had Sandy follow him to Derickson's house where he made the delivery.

There is no real dispute as to the six actual drug buys which occurred. Rather, the main issue raised by the defendants is that there was insufficient evidence to support the conspiracy convictions. They contend that the illegal sales were wholly unrelated actions taken by individual family members acting on their own.

On appeal, this court must affirm the jury's verdicts if, viewing the evidence most favorably to the government, there is substantial evidence to support the verdicts. United States v. Glasser, 315 U.S. 60 (1942). To establish a conspiracy, the government must show an agreement and an overt act. United States v. Williams, 503 F.2d 50 (6th Cir. 1974). Conspirators may join a conspiracy late or leave it early and still be liable. Furthermore, there is no requirement that co-conspirators know the full scope of the conspiracy. United States v. Shermetaro, 625 F.2d 104 (6th Cir. 1980).

With these principles in mind, we find sufficient evidence to support the conspiracy convictions as to all defendants. We believe that a rational jury could have found all five defendants guilty of conspiracy beyond a reasonable doubt. Initially, the jury could infer from the

family relationships that the five defendants were acting in concert. This inference is further supported by evidence which indicated that all five defendants worked together to sell drugs. For example, when Debbie and Donald Newsom sold Sandy marijuana which was an ounce short, it was Mehratza who delivered the missing ounce. And, when Donald Newsom was not home on a later occasion, Larry Newsom stepped into the breach and completed the sale. Furthermore, there was evidence that Monnie Derickson supplied drugs to each of the other defendants.

The defendants also attack the district court's instruction on conspiracy because the court did not specifically instruct the jury that it must find a conspiracy to distribute marijuana and cocaine. We find this argument to be without merit. The district court read the indictment and gave a copy to the jury, and the indictment is

clearly expressed in the conjunctive. We find that further instruction was unnecessary.

Several of the defendants also challenge the sufficiency of the evidence as to the individual convictions for distribution. We find no merit in any of these claims.

All of the defendants challenge the refusal of the district court to grant separate trials. The first step in this court's analysis is to determine whether the defendants were properly joined in the first instance under Rule 8(b) of the Federal Rules of Criminal Procedure. We find that joinder was proper inasmuch as this was a single conspiracy involving overt acts by all five defendants. Since the defendants were properly joined in the first instance, the denial of severance under Rule 14 of the Federal Rules of Criminal Procedure can only be overturned

upon a finding of abuse of discretion. United States v. Kendricks, 623 F.2d 1165 (6th Cir. 1980). To prevail, the defendants must show actual antagonism between co-defendants that will mislead or confuse the jury. Id. at 1168.

We find no such showing. The defendants basically put on no defense at all, thereby precluding a finding of antagonism. In any event, there is no indication that the jury was confused or misled. The fact that the jury acquitted Larry Newsom on the cocaine sale demonstrates their ability to separate out the evidence as it related to each defendant and each transaction. We find that the district court did not abuse its discretion in denying a severance.

The defendants also raise several claims with regard to discovery. One claim concerns the government's failure to give certain tapes relating to the

cocaine sale to the defendants during discovery. The district court suppressed the tapes but permitted oral testimony as to the conversations. The defendants contend that the district court should have imposed the stronger sanction of suppressing all testimony. We find that the district court did not abuse its discretion. The defendants were not surprised nor were they deprived of any meritorious defenses. United States v. Gladney, 563 F.2d 491 (1st Cir. 1977). A technical violation of discovery rules which did not prejudice the defendants in any way is not reversible error. See United States v. Vinson, 606 F.2d 149, 152 (6th Cir. 1979), cert. denied 444 U.S. 1074, reh. denied 445 U.S. 972 (1980). We likewise find no merit in the balance of the defendants' discovery claims.

Monnie Derickson contends that her conviction on Count Four should be reversed because the original bag which she turned

over to Sandy on April 8 was destroyed by the police. Inasmuch as this claim was never raised below, we will not consider it on appeal. We do note, however, that there is absolutely no evidence in the record that any such bag ever existed.

Finally, Larry Newsom and Beverly Mehratza challenge their sentences. Larry Newsom contends that the district court gave unwarranted weight to hearsay statements by the prosecutor while Mehratza contends that the court improperly considered her failure to testify at trial. We find no merit in either argument. A sentencing judge is entitled to examine a broad scope of information, Roberts v. United States, 445 U.S. 552 (1980), and we find no evidence that the district court exceeded that scope.

We find no merit in any of the defendants' claims. Accordingly, the judgments of the district court are affirmed.

ENTERED BY ORDER OF THE COURT

/s/
Clerk

Nos. 81-5297
81-5345
81-5346
81-5347

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee vs. MONNIE DERICKSON (81-5297) DEBBIE NEWSOM & DONALD NEWSOM (81-5345) LARRY NEWSOM (81-5346) BEVERLY MEHRATZA (81-5347) Defendants-Appellant	)	ORDER DENYING PETITION FOR REHEARING

Before: ENGEL and CONTIE, Circuit Judges; and Taylor, District Judge.*

A majority of the court having not voted in favor of an en banc rehearing, the

*The Honorable Robert L. Taylor, United States District Judge for the Eastern District of Tennessee, sitting by designation.

petition for rehearing has been referred to the hearing panel for disposition.

Upon consideration, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/_____
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VS.

MONNIE DERICKSON, et al.,

Defendant-Appellant.

Nos. 81-5297, 81-5345, 81-5346, 81-5347
District Court
Nos. 80-20154, et al.

MOTION TO STAY MANDATE
PENDING APPLICATION FOR CERTIORARI

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT:

COMES NOW Defendant-Appellant, through counsel, who would respectfully move this

Court for entry of an order staying the mandate in this cause, in order to allow the Defendant to remain free on the present bond pending the filing and, we trust, hearing on a Petition for Writ of Certiorari, to review an Opinion of this Court, by which Appellant is aggrieved, entered October 28, 1982.

Counsel regrets the short delay in filing the Motion to Stay Mandate but would beg the Court's indulgence. Counsel is just now nearing the end of a twenty-count, month-long political corruption trial of a Tennessee State Senator.

Appellant would respectfully pray that this Honorable Court grant an additional thirty (30) days stay of the issuance of the mandate, pursuant to the authority of Rule 41(b) of the Federal Rules of Appellate Procedure. Appellant respectfully would further move that, upon the timely filing of the Petition for Writ of Certio-

rari to the United States Supreme Court, and notification to the Clerk of this Court, the mandate be stayed pending disposition of the matter in that Court.

Respectfully submitted,

/s/
JAY FRED FRIEDMAN
Attorney for Defendant-Appellant
147 Jefferson, Suite 406
Memphis, Tennessee 38103
901/527-6518

CERTIFICATE OF SERVICE

I, JAY FRED FRIEDMAN, hereby certify that a copy of the foregoing Motion to Stay Mandate Pending Application for Certiorari has been served upon the Office of the United States Attorney, 10th Floor, Federal Building, 167 North Main Street, Memphis, Tennessee, 38103, this the (9th) day of November, 1982.

/s/
JAY FRED FRIEDMAN

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOS. 81-5297, 81-5345/46/47

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff-Appellee	:	
	:	
vs	:	O R D E R
	:	
MONNIE DERICKSON, ET AL.,	:	
	:	
Defendants-Appellants.	:	

ORDER STAYING MANDATE

ORDERED, That motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby granted and the mandate is stayed for thirty days from this date; provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any judge thereof, or if

the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue.

ENTERED BY ORDER OF THE COURT.

/s/
John P. Hehman, Clerk

CERTIFICATE OF SERVICE

I, JAY FRED FRIEDMAN, hereby certify that three copies of the foregoing have been served upon the Solicitor General, Department of Justice, Washington, D.C., 20530, and upon Mr. Hickman Ewing and Ms. Katherine Carlyle, United States Attorneys, 10th Floor, Federal Building, 167 North Main Street, Memphis, Tennessee, 38103, by U.S. Mail, first class postage prepaid, this the 14th day of December, 1982.

JAY FRED FRIEDMAN